IN THE HIGH COURT OF BOMBAY AT GOA

WRIT PETITION NO. 66 OF 2006

SHRI TULSHIDAS V. PEDNEKAR, ...Petitioner
BICHOLIM GOA.

Versus

CUSTODIAN OF EVACUEE PROPERTY, ...Respondent
PANAJI GOA.

Mr. R. S. Parshekar, Advocate for the Petitioner.
Shri G. Shirodkar, Govt. Advocate for the Respondent.

Coram:- SMT. RANJANA DESAI, J.

Date:- 22nd June, 2006

P.C.:

The petitioner is original defendant. The petitioner has filed this petition challenging the Order dated 30th March, 2005 passed by the Addl. District Judge, Mapusa, Goa, rejecting his application for amendment of the written statement.

2. Civil Suit No. 43/2004 is filed, inter alia praying for a permanent injunction restraining the defendant from carrying out any construction/repairs to the suit house without obtaining NOC from the plaintiff. In short, it is the case of the plaintiff that the defendant has illegally carried out some construction in the suit property. Written statement was filed by the petitioner/defendant in which the defendant contended that in fact he is the owner of the suit structure and has been carrying on business of bar and restaurant therein for the last more than 30 years continuously without interference from any person in any manner whatsoever. This written statement was filed on 18.01.89. Thereafter the defendant preferred an application for amendment of the written statement on 21.12.04. By this amendment the defendant wants to

contend that the suit structure is a mundkarial dwelling house in which the defendant and his family members are residing since last more than 35 years. He wants to contend now that the dwelling house came to be constructed by him with the consent of the plaintiff. The learned Judge has rejected the amendment application by holding that in this amendment application a plea is sought to be raised of mundkarship of the structure after 15 years of the suit which could well have been taken at the time of contesting the suit initially. The learned Judge has further observed that apparently the amendment application is intended to delay and protract the suit.

3. I have heard the learned counsel appearing for the petitioner. He submitted that while considering amendment applications, the Courts have to be liberal. No hypertechnical approach should be adopted. According to the learned Counsel, the trial Court misdirected itself in holding that the amendment application was intended to delay and protract the suit. He submitted that the suit was adjourned for various reasons and for the delay the defendant is not responsible. The learned counsel urged that in the interest of justice the amendment application ought to have been granted. In support of his submission, the learned counsel relied upon Raj Kumar v. Dipender Kaur Sethi (A.I.R. 2005 S.C. 1592) and Fertilizer Corporation of India Ltd. v. M/s. Prabha Kirana Stores (A.I.R. 2004 Allahabad 82).

4. There can be no dispute about the proposition that generally the Courts have to adopt a liberal approach while considering amendment applications. The Supreme Court has depracated hypertechnical approach adopted by the Courts. It is also true that in case of amendment to written statements, the Courts are expected to be more liberal. However, in a case where it is apparent that the defendant is interested in protracting the litigation and has shown total negligence or inertia in prosecuting the suit, the Court will be justified in refusing the amendment application. In the present case the amendment application is moved after 15 years. In this connection, Order 6, Rule 17 of the Code of Civil Procedure may be

quoted :-

"17. Amendment of pleadings. - The Court may at any stage of the proceedings allow either party to alter or amend his pleadings in such manner and on such terms as may be just, and all such amendments shall be made as may be necessary for the purpose of determining the real questions in controversy between the parties:

Provided that no application for amendment shall be allowed after the trial has commenced, unless the Court comes to the conclusion that in spite of due diligence, the party could not have raised the matter before the commencement of trial. "

5. The above provisions states that the Court may, at any stage of the proceeding, allow either party to amend its pleadings. This is to be done to ensure that the real questions in controversy between the parties are determined by the Court. Such an approach is necessary to avoid multiplicity of suits. However, the proviso makes it clear that no application for amendment shall be allowed after the trial has commenced unless the Court comes to the conclusion that inspite of due diligence the party could not have raised the matter before commencement of the trial. There is no dispute about the fact that the trial has commenced. The plaintiff's evidence is over. The defendant has to lead his evidence. It cannot be said, in the facts of this case that the plea which is being raised by the defendant at such a belated stage could not have been raised by him at the commencement of the trial. It is also an admitted position that after the instant amendment application was rejected by the trial Court, the petitioner moved another amendment application on 9.1.06. That came to be rejected on 24.1.06. I am informed that the trial Court has directed the defendant to lead his evidence which he has not done so far.

6. It is also pertinent to note that the impugned order is passed on 30.3.05. The petitioner has taken his own sweet time to challenge that order. The present petition is filed as late as on 13.2.06 and taken up for admission on 7.6.04. Nothing more is required to come to a conclusion

that the petitioner is interested in procastinating the litigation. The amendment application is not bonafide. The trial Court has therefore rightly rejected the amendment application. No interference is necessary with the impugned order. The petitioner is expected to cooperate with the trial court and ensure that the suit is disposed of expeditiously.

Petition is disposed of in the aforestated terms.

SMT. RANJANA DESAI, J.

sl.